## BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

KEITH D. KENTCH Claimant	)
VS.	) Docket No. 152,246
GOODYEAR TIRE & RUBBER COMPANY Respondent	Docket 140. 102,240
AND	<b>,</b>
TRAVELERS INSURANCE COMPANY Insurance Carrier	<b>/</b>

#### ORDER

**ON** October 13, 1994, the application of the respondent and claimant for review of an Award entered by Special Administrative Law Judge William F. Morrissey, dated August 8, 1994, came on for oral argument.

# **APPEARANCES**

The claimant appeared by and through his attorney, W. Thomas Stratton of Topeka, Kansas. The respondent and its insurance carrier appeared by and through their attorney, John A. Bausch of Topeka, Kansas.

## RECORD

The record considered on appeal is the same as that specifically set forth in the Award of the Special Administrative Law Judge.

## **STIPULATIONS**

For purposes of the appeal, the Appeals Board adopts the stipulations listed in the Award by the Special Administrative Law Judge.

#### **ISSUES**

On appeal the only issue argued by the parties is the nature and extent of the claimant's disability. The Appeals Board adopts all other findings and conclusions of the Special Administrative Law Judge.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

For the reasons stated below, the Appeals Board finds claimant sustained a three percent (3%) permanent partial general disability as a result of an injury to his temporomandibular joint (TMJ) arising out of and in the course of his employment with respondent.

Claimant was injured when he was struck in the face by a co-worker. The parties have stipulated that the injury arose out of and in the course of claimant's employment and to all other issues of compensability. The sole issue to be decided on appeal is the nature and extent of claimant's disability.

Claimant testifies that since the injury he has had a clicking or popping in the temporomandibular joint and the condition causes some pain and interferes to some extent with his eating. He acknowledged that it does not affect his ability to perform his duties, only how he feels while performing them.

Three medical experts testified. Donald E. Clark, D.D.S., testified that in his opinion there was no connection between the accident and claimant's TMJ problems. His conclusion was based in part on the records of Michael E. Michel D.D.S., reflecting that claimant had experienced some crepitation of the TMJ before the injury in the course of his employment.

Michael E. Michel D.D.S., testified that he acted as claimant's dentist both before and after the accident in question. He also indicated that he could not attribute the claimant's current crepitation and misalignment to the injury at work. Only Dr. Wertzberger, an orthopedic surgeon, provided expert opinion that claimant has disability resulting from his work related injury.

The Appeals Board nevertheless finds that the record as a whole does support a finding that claimant suffered some disability as a result of his work-related injury. Claimant testified that he had not had the problems with his jaw prior to the injury. He acknowledged he had, in the past, had some occasional asymptomatic clicking in his temporandibular joint. According to the claimant the condition worsened after the injury. Doctors Clark and Michel both find misalignment of the joint and crepitation. Dr. Wertzberger similarly finds subluxation and crepitation.

The Appeals Board does not, however, agree with the evaluation of the disability by Dr. Wertzberger. He purports to apply the <u>AMA Guides to Evaluation of Permanent Impairment</u>, Third Edition Revised, to evaluate the nature and extent of the disability. He refers specifically to the portion of Guides relating to impairment of upper extremity joints. By doing so he assesses a ten percent (10%) impairment of the body as a whole due to the subluxation and a five percent (5%) impairment to the crepitation. The evaluation appears deficient in several respects. First, the ratings referred to in the <u>AMA Guides</u> are percentages of impairment of the joint, not the body as a whole. Second, they relate to upper extremity joints, not the temporomandibular joint. Finally, the general body ratings appear to grossly overstate the claimant's disability.

The Appeals Board does, however, have the responsibility of evaluating the nature and extent of disability based upon the record as a whole. Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 785-786, 817 P.2d 212 (1991). The AMA Guides do suggest the crepitation and misalignment represent permanent disability. In this case Dr. Wertzberger also referred to Section 9.3 of the AMA Guides to Evaluation of Permanent Impairment, Third Edition Revised. The provisions of that section do attribute permanent disability to the body as a whole for impairment of functions such as chewing. The ratings that are given, however, began with five to ten percent for (5-10%) in cases where there are restrictions which limit the individual to semi solid or soft food diets. Claimant's disability is not so limiting. The Appeals Board finds based upon the claimant's description of his condition as well as that reflected in the testimony of the medical experts, claimant has sustained a lesser disability of three percent (3%) impairment to the body as a whole.

## AWARD

**WHEREFORE**, it is the finding, decision, and order of the appeals board that the Award of Special Administrative Judge William F. Morrissey, dated August 8, 1994 is herby modified as follows:

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Keith E. Kentch, and against the respondent, Goodyear Tire and Rubber Company and its insurance carrier, Travelers Insurance Company, and the Kansas Workers Compensation Fund for an accidental injury which occurred on November 13, 1990 and based on an average weekly wage of \$760.55, for 415 weeks of compensation at the rate of \$15.21 per week in the sum of \$6,312.15 for a 3% permanent partial general body impairment of function.

As of October 20, 1994, there is due and owing claimant 205.43 weeks of permanent partial compensation at the rate of \$15.21 per week in the sum of \$3,124.59, to be paid in one lump sum less any amounts previously paid. The remaining \$3,187.56 is to be paid for 209.57 weeks at the rate of \$15.21 per week until fully paid or further order of the Director.

Future medical benefits will be awarded only upon proper application to and approval of the director. Unauthorized medical expense of up to \$350.00 is ordered paid to or on behalf of the claimant upon presentation of proof of such expense.

All compensation, medical expenses and costs are to be borne by the respondent and none by the Kansas Workers Compensation Fund.

Claimant's attorney fee contract is hereby approved insofar as it is not inconsistent with K.S.A. 44-536.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed to the respondent to be paid direct as follows:

William F. Morrissey
Special Administrative Law Judge

\$150.00

Curtis, Schloetzer, Hedberg, Foster & Associates Transcript of Regular Hearing

\$142.60

Appino & Achten Reporting Service

Deposition of John J. Wertzberger, M.D. Deposition of Donald E. Clark, D.D.S. Deposition of Michael E. Michel, D.D.S.	\$263.80 \$342.00 \$154.40
IT IS SO ORDERED.	
Dated this day of October, 1994 .	
BOARD MEMBER	
BOARD MEMBER	
BOARD MEMBER	

c: W. Thomas Stratton, 420 SW 33rd Street, Topeka, Kansas 66611 John A Bausch, 1400 Topeka Ave., Topeka, Kansas 66601 Derenda J. Mitchell, 700 Kansas Ave., Topeka, Kansas 66601 William F. Morrissey, Special Administrative Law Judge George Gomez, Director